

wts klient newsletter

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The Bridge.

Dear Readers,

In the third part of our most recent video series we would like to draw your attention to the legal aspects of a **transition of accounting to a foreign currency**. When a company is considering accounting in a foreign currency, the main task is to review the currencies of **existing contracts** and see whether it is possible to amend the contracts concluded in Hungarian forints. In terms of **new contracts**, we need to ensure that the selected currency is defined for financial performance, while it is recommended to revise **contract templates** from this point of view as well. There are important deadlines and administrative tasks when making a transition to a foreign currency.

The video is available at the following link: wtsklient.hu/en/2017/06/21/transitioning-accounting-legal/ Please switch to English subtitles by clicking on "settings" in the right-hand corner of the video!

In the newsletter, our professionals also cover aspects related to **job termination by employers**, and the most recent developments of **OECD efforts against BEPS**.

I hope you will find our newsletter useful.

dr. Tamás Felsmann
tax law specialist

When the reason for termination is the employee's job conduct

When the reason for termination is the employee's job conduct, it is particularly wise to weigh up all the circumstances of the case before making a decision. » [page 1](#)

Signing of multilateral convention: another milestone in the BEPS Action Plan

On 7 June, Hungary along with 67 other countries joined the OECD Multilateral Tax Convention promoting the implementation of the BEPS Action Plan. » [page 3](#)

When the reason for termination is the employee's job conduct

In the case of termination based on an employee's job conduct, the legal risk can be mitigated as follows:

- by way of a written warning
- hearing of employee and those affected by the breach of obligation
- in the case of a one denial – one statement: postponing the announcement may be justified

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An employer needs to be very careful and exercise prudence when the reason for termination is an employee's job conduct. A hasty decision that does not explore the circumstances, or not comprehensively enough, may lead to the conclusion during a potential lawsuit that the termination of the employment was unlawful.

Reason for termination: clear, real and causal

The reason for termination based on the employee's job conduct is clear when it is obvious for the employee from the termination which breach of obligation resulted in the termination of their job. The reason for termination should not be too general or clichéd. The employee's conduct underlying the termination should be recorded precisely and in sufficient detail. It is not enough just to refer to a culpable breach of obligations by the employee as the reason for the termination, **it must be specified what breaches were committed, when, how, and how many times**. The reason for termination may be summarised too, bearing in mind that during a potential employment lawsuit the employer must prove the breach of obligation underlying the summary. It is recommended to refer to several facts and circumstances as the reason for the termination, and explain them in detail, rather than taking the risk that the court finds against the employer during a subsequent employment lawsuit for lack of legitimate reasons. Judicial practice is standard in that **if several reasons for termination are given, only one needs to be proven to support the lawfulness of the termination**. Another condition is that the reason for termination should be real and causal. The first aspect means that the conduct underlying the termination should be genuine and factual. Under the second aspect, however, the termination should make it clear that the work of the employee is not needed owing to the conduct specified in the termination, and that the employer cannot be expected to maintain the employment relationship because of this.

Reason for termination should be timely

It must be emphasised that the breach of obligation specified as the termination reason should be **related** to the announcement of the termination **in time**. Due care is needed especially when the employer intends to terminate the employee's employment by referring to conduct that has endured for a long time. This is because the requirement of good faith and integrity stipulated by the Hungarian Labour Code is violated when the exercising of employer rights contradicts previous behaviour of the employer that the employee had reason to trust. For example, if the employer endured for years that the employee finished his/her work half an hour prior to the end of normal working hours, then this cannot be used as the basis for a lawful termination.

Burden of proof during employment lawsuit

Proving that the reason for termination is real and causal is down to the given employer, during which they frequently encounter **difficulties**. Yet this risk can be mitigated significantly with appropriate preparation.

→ Written warning

A written warning can be an appropriate legal tool to prove a breach of obligation of the appropriate weight and frequency that provides a suitable basis for lawful termination. For example, being late once does not provide an appropriate basis for termination, but if an employee is regularly unable to start work at the beginning of the working day, despite multiple written warnings, this can be enough for a lawful termination overall. Only by weighing up all the circumstances of a given case can it be defined how many employer warnings are suitable for proving the lawfulness of a termination during an employment lawsuit. Reference must be made to the **prohibition of double judgement (ne bis in idem)**, according to which **the employer cannot issue warnings and terminate employment simultaneously because of the same employee conduct**. According to the above example, when the employer issues a written warning to the employee for being late, the employer cannot terminate their employment at the same time. Having said that, if the employee is late again, the warning previously issued because of the same breach of obligation can substantiate the employer's decision.

→ Hearing of employee and those affected by breach of obligation

The employee affected by the termination always has to be questioned about all the circumstances of the case when the breach of obligation is committed, or immediately when the employer becomes aware of it, and **they must be granted an opportunity to present their case**. This is derived from the parties' obligation to cooperate. The employee should sign the **minutes** of this meeting in the presence of **two witnesses**, and it is important that a copy of the minutes be given to the employee. If the breach of obligation affects other employees too, the employer should ask them without delay as well, and record their statements in writing according to the above.

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"While the transition to a foreign currency only takes a moment, this must be preceded by months of preparation."

Szabolcs Szeles, WTS Klient Hungary financial advisory director

Source: inforadio.hu



Turn on your radio!



"Even if the ERP system is suitable for meeting the challenges of a transition to accounting in a foreign currency, IT developments will still certainly be necessary to facilitate the transition" – says Szabolcs Szeles, Finance Advisory Director at WTS Klient, talking in an interview given to InfoRadio on 22 June about the accounting tasks involved in making the transition to accounting in a foreign currency.

[Listen to the conversation at this link!](#)

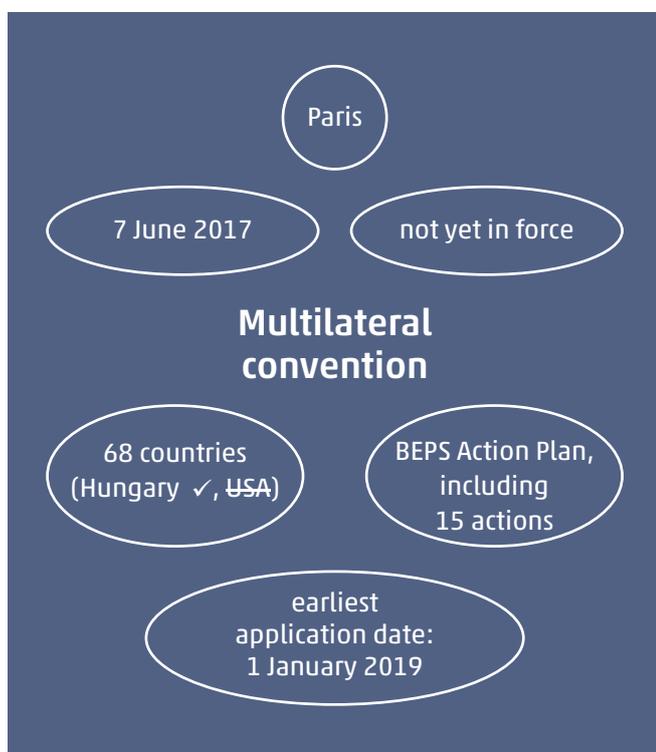
Please note that the conversation is available only in Hungarian.

→ One denial – one statement

For lack of other evidence, if it is only the employer's word against the employee, announcing the termination does entail a high legal risk given that the employer will have to prove the decision if it goes to court. In such cases, it is **advisable to postpone the announcement of the termination** so the employer can start to document the individual breaches of obligation in order to support the lawfulness of the termination if the dispute ends up in court.

To mitigate the legal risk, in the case of a termination based on employee job conduct it is best to consider prior to issuing the termination what evidence can be used to support the lawfulness of the action during a subsequent employment lawsuit.

Signing of multilateral convention: another milestone in the BEPS Action Plan



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The signing ceremony of the [multilateral convention](#) to implement tax treaty related measures to prevent Base Erosion and Profit Shifting (BEPS) took place on 7 June 2017 in Paris.

Multilateral convention facilitates implementation of BEPS Action Plan

68 countries – including **Hungary** – signed the multilateral convention, while another 9 countries have expressed their intention to sign. Although the convention has been signed, **it has not yet entered into force**. This will happen on the first day of the 4th month after it has been ratified by at least 5 countries. Interestingly, although the United States was involved in drafting the multilateral convention, they were not among the countries signing it on 7 June.

The multilateral convention **is aimed at implementing and applying the BEPS Action Plan** without having to amend thousands of bilateral agreements in force between the signatory countries one by one.

Besides the mandatory requirements, the multilateral convention also includes so-called options, which means that countries can freely decide whether to apply these recommendations, and which bilateral agreements reached with other countries they will apply them for. OECD will keep a separate database to monitor which provisions of the multilateral convention countries wish to apply, and in relation to which bilateral agreements.

Ratification required to apply convention

In terms of bilateral agreements between two countries, the provisions of the multilateral convention **may only be applied**, if the relevant provisions **have been ratified by both countries**. Considering the procedures, the earliest application date is likely to be 1 January 2019.

Since the ratified provisions of the multilateral convention will not be transposed into the bilateral agreements, when examining cross-border transactions in future it will be important to review – besides the bilateral agreements themselves – whether the multilateral convention is already in force in the given country, and if so, which provisions have been approved by the countries involved.

This WTS information does not constitute advice and it serves only to provide general information about selected topics.

Any information contained herein shall thus not be considered exhaustive, and nor may it be relied upon instead of advisory services in individual cases. We accept no liability for the accuracy of the content.

Should you have any questions regarding the above or any other professional issues, please do not hesitate to get in touch with your WTS advisor or use any of the contact details below.

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